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**Your property  
Your  
transportation  
project**

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## **INTRODUCTION**

This booklet was prepared for you as a person who may be affected by a proposed public transportation project. If it is your property that is involved, you may have wondered what will happen. Who will contact you? How much will you be paid for your property? Who will pay your moving costs? Will the State help you find a new place to live? Important questions like these require specific answers.

We hope this booklet will answer some of your questions and present a better picture of our overall procedures.

## **Why does a public agency have the right to buy my property?**

Our State and federal constitutions recognize the need for public agencies to purchase private property for public use, and provide appropriate safeguards to accomplish this purpose. State and federal constitutions and the Uniform Relocation Assistance and Real Property Acquisition Policies Act authorize the purchase of private property for public use and assure full protection of the rights of each citizen. The responsibility for studying potential sites for a transportation project rests with a team of specially trained individuals selected to do this important job. Many months are spent in preliminary study and investigation to consider possible locations for a project.

Consideration of the environmental elements and social effect are as much a part of location determination as engineering and cost. Participation by private citizens and public agencies is actively sought so that various views can be considered in the study process. The process includes public hearings which give persons an opportunity to express their views on the locations being considered.

The California Department of Transportation is composed of many specialists. Among these are:

### **Statisticians**

Determine how we wish to travel and where we desire to go. This includes studies of existing traffic patterns, "origin-destination" surveys and user benefits.

### **Economists**

Determine whether the proposed project location is economically sound. They research and analyze the effects produced by similar projects upon other communities.

### **Environmentalists**

Evaluate the effect of the proposed project on social and environmental factors.

### **Advance planners**

Predict the transportation needs of the future based upon available statistics.

### **Design engineers**

Recommend the type of transportation project which will be of the most benefit to the public. They prepare design plans and determine which properties will be needed for the project.

## **Relocation specialists**

Make early studies of the needs of the persons who will have to be relocated and the kind of replacement housing which will be required. A detailed replacement housing plan will be completed before the Department requires anyone to move.

As a result of this team effort, the best possible location for a transportation facility is selected. The particular location is selected after thorough social, economic, engineering, and environmental analysis, as well as consideration of expressed public desires. The goal is the greatest public good and the least private injury or inconvenience while rendering the best possible service.

## **Who will contact me?**

Appraisal and purchase of properties needed for this transportation facility is the responsibility of the State Department of Transportation. The Department provides a Relocation Assistance Program for businesses and persons who must move because of a project. A Right of Way Agent from the Department will assist you and give you general information about the project.

One of the first persons you will meet is a staff appraiser collecting valuation data in your neighborhood. The appraiser will analyze your property and examine all of the features which contribute to its value. Information about improvements you have made and any other special features that you believe may affect the value of your property should be given to the appraiser to ensure a fair value is assigned to your property.

It is the duty of the Department to ensure that you receive the same price which you would receive if you sold your property privately in the open market. The Department cannot buy your property for more than it is worth, but it *can* and *will* assure you that you do not have to sell your property for less than its fair market value. If the property is an owner-occupied residential property containing no more than four residential units, California law provides that the owner, upon request, may review a copy of the appraisal upon which the offer is based.

## **What advantage is there in selling your property to the State?**

A real estate purchase by the Department of Transportation is handled in the same way as any private sale of property. However, there can be financial advantages in selling to the Department.

The Department will pay fair market value for your property. The Department also will pay for the preparation of all documents, all title and escrow fees, a policy of title insurance, recording fees and such other fees as may be required for the conveyance of title to the State of California. Since this is a direct conveyance of real property from the property owner to the State, there are no real estate commissions involved, and the Department will not recognize or pay any such real estate commission.

A private sale will usually cost around \$14,000 for sales expenses. There are no seller's expenses in a sale to the State.

Additionally, you may be eligible for relocation payments and benefits when you move. (These benefits are described in supplemental booklets which will be provided to you.)

### **Will I be paid for loss in value to my remaining property?**

When only a part of your property is needed, every reasonable effort is made to ensure that you do not suffer a financial loss. The total payment by the State will be for the property the State purchases and for any loss in value to your remaining property.

The determination of any loss in value is an appraisal problem involving variables in which a brief explanation might not adequately cover all situations. Should this situation be involved, the Department representative will fully explain the effect of a part purchase on your remaining property.

### **May I retain and move my home; business building; machinery; or equipment?**

The representative who has been assigned to buy your property will help you to determine whether you can or should move your house to another location, if this is what you wish. If your house is movable and you wish to make such an arrangement, the State will pay you on the basis of the market value of your present lot including landscaping, plus the reasonable cost of moving the building. There are cases, because of age, size or condition of the house, where the cost of moving it would exceed its present market value less its salvage value. In such a case, payment of moving cost would of course be an unwise expenditure.

If you operate a business, you may wish to keep and move fixed machinery and equipment. Additionally, as an owner of a business conducted on the property to be purchased, you may be entitled to compensation for the loss of goodwill.

If any of these concepts are applicable to your situation, they will be fully explained by the right of way agent assigned to purchase your property.

### **Will I have time to select another home after the State makes its purchase?**

The Department starts to appraise properties early enough so that you will have ample time to move prior to project construction. Like any other real estate transaction, it requires a month or two to close escrow after a right of way contract and deed have been signed. You will not be required to move until reasonable replacement housing is available.

If you don't want to buy another home right away, you may sell to the State and rent back temporarily. It is in your best interest, however, to look for a new place in which to live as soon as possible. Finding a home early, that best suits your needs, before you are required to move will minimize your personal inconvenience and you will avoid having to make a choice of housing under pressure when you are required to move.

If you wish, the State will, at no cost to you, provide you with assistance in finding a new place in which to live. The State will give you at least 90 days notice in writing before asking you to move.

### **What happens to the loan on my property?**

After you and the Department have agreed upon a price, a Department representative will contact all other parties having an interest in the property. Payment to satisfy outstanding loans or liens will be made through a title company escrow as in any other real estate transaction.

### **What will happen to my GI or Cal-Vet loan?**

The Veterans Administration and the California Department of Veterans Affairs allow your veteran loan privileges to be transferred and to become available for coverage on another property.

Your right of way representative will assist you; however, it is to your benefit and it is your responsibility to check with the Veterans Administration or the California Department of Veterans Affairs for procedural instructions.

If the value of my property is higher today than when I purchased it, do I have to pay income tax on this difference when I convey to the State?

According to the Internal Revenue Service, the sale of property to a governmental agency for public purposes comes under the definition of an “involuntary conversion”. In these cases, it is not necessary to pay income tax or capital gains tax if the money you receive is used to buy a similar property within a limited period of time. In every case, however, you should check with your local Internal Revenue Service office.

### **Will I lose the favorable tax base I now have under the provisions of Proposition 13?**

Section 2(d) of Article XIII.A of the California Constitution and Section 68, Rule 462.5 of the Revenue and Taxation Code generally provide that property tax relief shall be granted to any real property owner who acquires comparable replacement property after having been displaced by governmental acquisition or eminent domain proceedings.

You will be given a copy of Rule 462.5 with an attached page showing examples of how to calculate estimates of the tax relief you may be eligible for. These are only approximations. You must see your County Tax Assessor for a final determination.

**Note:** Revenue and Taxation Code Section 68, Rule 462.5, G.1 through G.4, set forth time limits that may affect your eligibility to retain your favorable current real property tax status.

### **The State's right of eminent domain.**

Sometimes, when private property is required for public purposes, the owner and the State cannot agree on the terms of sale. Our earnest hope is to avoid a proceeding in eminent domain with the added time, concern and cost to everyone. In cases where negotiations have reached an impasse and possession of the property is required in order to allow the project to proceed to construction, the State must resort to the use of the eminent domain process. About 20 percent of our transactions statewide require eminent domain proceedings, with the remainder being settled through negotiations.

An owner's rights are *guaranteed by the federal and State constitutions and applicable State laws*. The principal right is that just compensation must be paid. When there are indications that agreement on the purchase of your property cannot be reached, the State will initiate condemnation proceedings.

The Department will request authority from the California Transportation Commission to file a condemnation action. You will be given an opportunity to appear before the Commission to question whether public interest, necessity, planning and location

require the proposed project and your property. The Commission does not hear arguments regarding valuation.

Condemnation suit documents will be prepared by the State and filed with the court in the county where the property is located. Summons and complaint will then be served on all persons having a property interest in the parcel. The persons served must answer within 30 days.

Counsel for the parties will then prepare for trial, and the court will set dates for preliminary motions and the trial.

### **What happens in a condemnation trial?**

The purpose of the trial is to determine the amount of compensation. Usually the trial is conducted before a judge and jury. Both the property owner and the State will have the opportunity to present evidence of value. The jury will determine the amount of compensation after being instructed as to the law by the judge. In those cases where the parties choose not to have a jury, the judge will decide the amount of compensation.

The judgment is then prepared by counsel and signed by the judge. It will state that, upon deposit of the amount of the verdict with the court for the benefit of the property owner, title will be transferred to public ownership.

When the State makes the deposit as required by the judgment, the final order of condemnation is signed by the judge and recorded. This is the actual transfer of title.

### **Who pays the condemnation trial costs?**

The State pays the costs of its attorney and its engineering and appraisal witnesses. It will also pay the jury fees and certain of your incidental costs which are determined by law to be allowable costs. The fee for filing your answer with the court is an example of such costs.

If the judge feels that the State's offer of settlement was unreasonable and the demand of the property owner was reasonable viewed in light of the verdict, the property owner may receive litigation expenses. The judgment is then prepared by counsel and signed by the judge.



### **If I want a trial, must I have an attorney and expert witnesses?**

Most property owners will be represented by an attorney, although they have the right to represent themselves.

You may wish to consult your family attorney. If you do not have one, in many communities the yellow pages of the telephone directory will refer you to an attorney reference service.

You and your attorney must decide what type of case you will present and what witnesses will be needed.

### **Will I be paid any moving expenses or any other relocation assistance benefit even though I go to court?**

A decision to go to court has no effect on your right to moving expenses. Payment of moving expenses is made separately from the condemnation action. You will be provided details of additional assistance to help displaced persons, businesses, farms or nonprofit organizations in finding, purchasing or renting, and moving to a new location. These are explained in various booklets prepared for homeowners, tenants, business and farm operators and are made available by the Department of Transportation.

### **How long can I keep my property?**

This usually depends on when construction will begin. If the trial is conducted before the property is needed for construction, you may stay on the property and rent from the State.

If construction must begin before the trial, the State will seek a court order for possession.

The court will determine the proper amount of money which the State will be required to deposit with the State Treasurer as security for the purchase price of your property.

The court may then grant to the State an order for possession allowing the State to use the property for construction of the project.

The State will serve all persons having the property interest in your property with the order for possession.

Generally, the law requires the owner be given 90 days notice of the State's intention to take possession before the State may occupy your property.

Subject to the rights of any other persons having a property interest, you may withdraw all or part of the security deposit. If you do not make a withdrawal, the State will pay interest on the eventual court award of compensation from the time it occupied your property until the date of final payment to you. The current legal rate of interest will be paid at the time of final settlement.

The Department's representative assigned to purchase your property will assist you in the transaction and will be happy to answer any additional questions you may have.

## **DEFINITIONS**

The language used in relation to eminent domain proceedings may be new to you. These are some terms you may hear and their general meaning.

### **Acquire**

To purchase.

### **Answer**

The property owner's written reply, in appropriate legal form, filed with the court in response to the complaint and as requested by the summons.

### **Compensation**

The amount of money to which a property owner is entitled under the law for the purchase or damage to the property.

### **Complaint**

The document filed with the court by the State which initiates an eminent domain proceeding.

### **Condemnation**

The legal process by which a proceeding in eminent domain is accomplished.

### **Counsel**

An attorney or attorneys.

### **Eminent Domain**

The right of government to purchase private property for public use.

### **Final order of condemnation**

The instrument which, when recorded, transfers title to public ownership.

### **Judgment**

The court's formal decision based on applicable law and the verdict.

**Loss of goodwill**

A loss in the value of a business caused by the State's acquisition of property that cannot be reasonably prevented by relocation of the business or the owner adopting prudent or reasonable steps that preserve the value of the business goodwill.

**Market value**

The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

**Parcel**

Usually means the property that is being acquired.

**Plaintiff**

The public agency that desires to purchase the property.

**Possession**

Legal control; to have the right to use.

**Property**

The right or interest which an individual has in land, including the rights to use or possess. Property is ownership; the exclusive right to use, possess or dispose of a thing.

**Right of entry**

An agreement between an owner and the State which allows the State to utilize the property while continuing to negotiate the terms of settlement. Interest, calculated at the current legal rate, is included in the settlement upon conclusion of the transaction.

**State**

The State of California acting through the Department of Transportation.

**Summons**

Notification of filing of a lawsuit in eminent domain and of the necessity to file an answer or other responsive pleading.

**Title**

Legal ownership.

**Trial**

The hearing of the facts from plaintiff and defendant in court, either with or without a jury.

**Verdict**

The amount of compensation to be paid for the property.

**STATE OF CALIFORNIA  
BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF RIGHT OF WAY**

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**AUGUST 1998**

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**This is an informational pamphlet only. It is not intended to give a complete statement of all state or federal laws and regulations pertaining to the purchase of your property for a public use, the relocation assistance program, technical legal definitions, or any form of legal advice.**